

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant has not mitigated foreign preference concerns established by his use of a Lebanese passport to travel there on at least seven occasions. Although he surrendered his Lebanese passport to the Embassy, it is of limited mitigative value. His unwillingness to renounce his Lebanese citizenship would enable him to acquire another Lebanese passport at anytime. Applicant has also failed to mitigate foreign influence concerns with respect to members of his immediate family and his wife's immediate family who are citizens and residents of Lebanon. Finally, he has failed to mitigate personal conduct concerns raised by his failure to disclose his possession of a Lebanese passport and his travel to Lebanon. Clearance is denied.

CASENO: 03-15493.h1

DATE: 02/14/2005

DATE: February 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15493

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

Daniel Crowley, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has not mitigated foreign preference concerns established by his use of a Lebanese passport to travel there on at least seven occasions. Although he surrendered his Lebanese passport to the Embassy, it is of limited mitigative value. His unwillingness to renounce his Lebanese citizenship would enable him to acquire another Lebanese passport at anytime. Applicant has also failed to mitigate foreign influence concerns with respect to members of his immediate family and his wife's immediate family who are citizens and residents of Lebanon. Finally, he has failed to mitigate personal conduct concerns raised by his failure to disclose his possession of a Lebanese passport and his travel to Lebanon. Clearance is denied.

STATEMENT OF THE CASE

On October 15, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive (Directive), [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On November 11, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on March 8, 2004. A notice of hearing was issued on May 21, 2004 and the hearing was held on June 9, 2004. During the hearing, 11 Government exhibits (Govt Ex) and the testimony of Applicant were received. Without objection by Department Counsel, I allowed Applicant until June 23, 2004 to submit evidence of the surrender of his Lebanese passport, as well as character evidence. I have marked the documents subsequently submitted on behalf of Applicant as Applicant Exhibits A-E and included them in the file. The transcript (Tr) was received on July 9, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 41-year-old operations manager employed by a defense construction contractor performing requirements at the White House and Executive Office Building. He was born in Lebanon and immigrated to the United States at the age of 12. Applicant obtained his high school diploma, undergraduate degree, and masters degree in the United States. He became a citizen of the United States on October 14, 1981.

Applicant applied for a Lebanese passport that was issued on October 10, 1990 (SOR ¶ 1.a). He used that passport to travel to Lebanon on at least seven occasions in 1991, 1994, 1995, 1996, 1997, and 1998 (SOR ¶ 1.b). Applicant normally travels to Lebanon on an annual basis to visit relatives. Although his Lebanese passport was issued for a term of five years, he was able to use the passport to travel to Lebanon on at least three occasions in 1996, 1997, and 1998. He surrendered his Lebanese passport to the Lebanese Embassy on June 22, 2004 (SOR ¶ 1.a).

Applicant's wife is a dual citizen of the United States and Lebanon and resides with him and their three children in the United States (SOR ¶ 2.e). His parents, now retired, are dual citizens of the United States and Lebanon and they reside in Lebanon (SOR ¶ 2.a). Applicant's parents-in-law are citizens and residents of Lebanon (SOR ¶ 2.g). His father-in-law teaches at a university.

Applicant has two brothers who are dual citizens of the United States and Lebanon and who reside with their wives in the United States (SOR ¶ 2.b, c). His older brother has a medical practice and his younger brother is an architect. Applicant's sister, who practices medicine, and her husband are dual citizens of the United States and Lebanon. They reside in Saudi Arabia (SOR ¶ 2.d).

The brother of Applicant's wife is a citizen of Lebanon and resides with them in the United States (SOR ¶ 2.f). The sister of Applicant's wife and her husband are citizens of Lebanon and reside in the United Arab Emirates (SOR ¶ 2.h).

On January 15, 2002, Applicant submitted a security clearance application (SF 86). In response to question 15, ⁽³⁾ he answered, "no," and failed to disclose his Lebanese passport (SOR ¶ 3.a). In response to question 16 ⁽⁴⁾ on the same SF 86, Applicant answered, "no," and failed to disclose his trips to Lebanon (SOR ¶ 3.b).

On June 6, 2001, Applicant provided a sworn statement to an investigator for the Defense Security Service (DSS). In part, he stated, "at this time I would be unwilling to renounce dual citizenship for any reason" (SOR ¶ 1.c).

The U.S. State Department warns its citizens to carefully consider the risks of travel to Lebanon. A number of terrorist organizations operate in Lebanon. They include Hizballah, Palestinian groups hostile to the United States and Lebanese government, and Asbat-al-Ansar, a terrorist group with links to Al-Qaida. ^(S)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information Within Industry* § 2 (February 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the conditions listed in the Directive's guidelines and the applicant's security worthiness. *See* ISCR Case No. 95-0611 at 2 (May 2, 1996). (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (December 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive ¶ E2.2.2.

CONCLUSIONS

Guideline C: Foreign Preference

The concern under Guideline C is that when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. The Directive ¶ E2.A3.1.1. Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship, ¶ E2.A2.1.1 (Disqualifying Condition 1). They also include ¶ E2.A2.1.2, possession and/or use of a foreign passport (Disqualifying Condition 2). Pursuant to a memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and

Intelligence (ASDC3I Memo), ⁽⁶⁾ "application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

Applicant's acquisition and use of a Lebanese passport on at least seven occasions after becoming a U.S. citizen raises both Disqualifying Condition 1 and Disqualifying Condition 2. He testified he only used it during a prohibition against U.S. citizens traveling to Lebanon. This is somewhat troubling from a security standpoint since Applicant used his dual citizenship to do what he was prohibited from doing as a U.S. citizen. Clearly, it does not mitigate his use of a foreign passport. As the ASDC3I Memo recognizes, the only applicable mitigating factor for such use is when it has the official approval of the United States Government. The fact Applicant no longer possesses the passport may satisfy the prohibition contained in the ASDC3I Memo, however, it does not serve to fully mitigate the concern under Guideline E. Although he surrendered his passport to the Lebanese Embassy, it is of limited mitigative value. Applicant did not provide a copy of any correspondence that accompanied the passport or other evidence of the circumstances under which he surrendered it. Moreover, his continued Lebanese citizenship enables him to apply for another Lebanese passport at anytime. Given this record, Applicant has not met his burden of refuting or mitigating the evidence of a foreign preference. I find against Applicant with regard to SOR ¶ 1.

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security

determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying under Guideline B include E2.A2.1.2.1, an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country (Disqualifying Condition 1). The record raises Disqualifying Condition 1 with regard to members of Applicant's immediate family and his wife's immediate family who are citizens or residents of Lebanon.

Conditions that could mitigate security concerns include E2.A2.1.3.1 (Mitigating Condition 1). Mitigating Condition 1 applies with a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. Based on the record, no member of Applicant's immediate family or his wife's immediate family are agents of a foreign power. Neither his wife nor his brothers are in a position to be exploited by a foreign power because they are citizens and residents of the United States. Therefore, based on the application of Mitigating Condition 1, I find in favor of Applicant with regard to SOR ¶ 2.b, c, and e.

However, the application of Mitigating Condition 1 has not been established with respect to the other members of Applicant's immediate family or his wife's immediate family. Although his parents acquired U.S. citizenship, they remain citizens of Lebanon and continue to reside in a country of much turmoil and in which terrorist groups are known to operate. The record fails to demonstrate that they are not in a position to be exploited. In fact, during his testimony Applicant related an incident in 1976 when both his brother and his father had been fired upon in their home by a sniper on the same day.

The same is true with respect to his parents-in-law, with whom he has close ties of affection or obligation. Applicant suggested they intend to immigrate to the United States when his father-in-law retires. However, they remain citizens and residents of Lebanon. The record fails to establish that they are not in a position to be exploited.

Even though Applicant's sister-in-law and brother-in-law do not reside in Lebanon, they remain Lebanese citizens. Once again, the record fails to establish that they are not in a position to be exploited by a foreign power.

Despite the fact that Applicant's sister is a U.S. citizen, the record does not demonstrate that she is not in a position to be exploited by a foreign power. The limited information concerning his sister who resides in Saudi Arabia results in doubt as to her susceptibility to exploitation. In accordance with Directive ¶ E 2.2.2, such doubt must be resolved in favor of national security. In light of the record, I find against Applicant with regard to SOR ¶ 2.a, d, f, g and h.

Guideline E: Personal Conduct

The concern under Guideline E is conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying under Guideline E include ¶ E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's failures to disclose his possession of a Lebanese passport and his travel to Lebanon on his SF 86 raises Disqualifying Condition 2. He denies these failures were intentional. Applicant contends he simply misread question 16 and thought it required the disclosure of official U.S. Government travel outside the U.S. This excuse for his failure to disclose his travel to Lebanon does not appear credible in light of his additional failure to disclose his possession of a Lebanese passport in response to question 15. With regard to question 15, Applicant testified he simply overlooked the question. However, his testimony was not consistent because he also testified he did not examine his Lebanese passport to determine the expiration date when he completed his SF 86. In any event, Applicant has failed to demonstrate that his omissions from his SF 86 were not intentional. Although Applicant has provided evidence of good character, it is not sufficient to meet his burden under ¶ E3.1.15. of the Directive and mitigate the concern raised by the false answers on his security clearance application. I find against Applicant with regard to SOR ¶ 3.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified.
3. "In the last 7 years, have you had an active passport that was issued by a foreign government?"

4. "Have you traveled outside the United States on other than official U.S. Government orders in the last 7 years?"

5. Govt Ex 11.

6. "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline," dated August 16, 2000.